

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



74-2594

To be argued by  
SHEILA GINSBERG

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

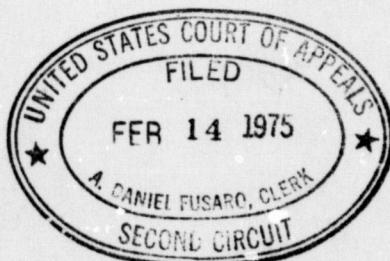
JACQUELINE DOZIER,

Appellant.

*BJS*  
*AS*  
Docket No. 74-2594

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK



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**PAGINATION AS IN ORIGINAL COPY**

CRIMINAL DOCKET

74CR 182

JUDD, J.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	
MARY LOU DANTZLER and JACQUELINE DOZIER	
	For Defendant:
Did possess with intent to distribute cocaine	

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED		
		DATE	NAME	RECEIVED
Fine,		12/6/74	Notice of Appeal (No Fee)	
Clerk,			(Jacqueline Dozier)	
Marshal,				
Attorney,				
Commissioner's Court,				
Witnesses,				

DATE	PROCEEDINGS
3-8-74	Before Mishler, Ch J - Indictment filed.
3-21-74	Before JUDD, J. - Case called- Defts and counsel present-Defts arraigned and enter pleas of not guilty-Bail contd as to both defts- Case adjd to 5-29-74 for trial
3-27-74	Notice of readiness for trial filed
4-17-74	Magistrates File 73M1860 inserted into CR file
5-29-74	Before JUDD, J - case called & adjd to July 3, 1974 (for trial)
7-15-74	Before JUDD, J - case called - defts & counsels present (Gutman of Legal Aid for deft DOZIER and counsel Dechter for deft DANTZLER) Defts motion to dismiss - motion argued and denied - case adjd to July 23, 1974 as to deft DOZIER for trial and to 9-16-74 for trial as to deft DANTZLER.

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
7-23-74	Before JUDD, J - case called & adjd to 9-16-74 at 10:00 A.M. for trial.		
9/16/74	Before JUDD, J. - Case called- Defts Docier present with counsel J. Gutman Deft Dantzler not present-Bench Warrant ordered for deft Dantzler Bench Warrant ordered is now vacated-Deft Dantzler present with counsel Deft Dantzler present with counsel-Deft Dantzler after being advised of her rights and on her own behalf withdraws her plea of not guilty and enters a plea of guilty as charged-The court is satisfied there is a factual basis for and accepts the plea-Bail cont'd-Case adjd to 9/19/74		
9-19-74	Before JUDD, J. - Case called- Deft JACQUELINE DOZIER and counsel present- ordered and begun-Jurors selected and sworn-Govt opens- Deft waives open Trial contd to 9-23-74 at 10:15		
9-23-74	Before JUDD, J - case called - deft & counsel present - trial resumed - Govt rests - defts motion d/c to dismiss - motion denied - deft rests - Govt opens on rebuttal - Govt rests on rebuttal. Deft rests on Sur-Rebut Both sides rest - defts motion for Judgment of Acquittal - motion denied Govt sums up - deft sums up - trial contd to 9-24-74.		
9-24-74	Before JUDD, J. - Case called- Deft and counsel John Gutman of Legal Aid Trial resumed- Judge Charges jury- Marshals sworn- Alternates discharged Jury retires to deliberate- Jury returns at 3:40 P.M. to hear a modified Allen charge- Jury resumes at 3:42 P.M.- Jury returns at 4:35 to hear further charge-- Jury returns and renders a verdict of guilty- Jury polled Trial concluded--Jury discharged- Bail contd- case adjd without date for sentencing		
9-24-74	By JUDD, J- Order of sustenance filed		
12/6/74	Before JUDD, J. - Case called- Deft DOZIER and counsel present- Deft sent to study and report pursuant to T-18, U.S.C. Sec. 5010(e) of the Y.C.A. Execution of sentence stayed pending appeal- Clerk to file notice of appeal in forma pauperis on behalf of deft - Deft DANTZLER and counsel not present Bench warrant ordered- stayed to 12/9/74 at 2:00 P.M.- At 2:30 P.M. deft DANTZLER and counsel present- Deft sentenced to study and report pursuant to T-18, U.S.C. Sec. 5010(e)- Execution of sentence stayed to 12/17/74 at 12:00 P.M.		
12/6/74	Judgments and Commitments filed -certified copies to Marshal (OTHIEFTS)		
12/6/74	Notice of appeal filed- with-out fee (DOZIER) 10/2/74		
12/6/74	Docket entries and duplicate of notice of appeal mailed to court of appeals		
12/10/74	Amended Judgment and Commitment filed (DANTZLER) LEWY		
12/24/74	Record on appeal certified and handed to John Gill for delivery to c/o of a		

BY

TPP:JOB:sj  
F# 735,148

U.S. DISTRICT COURT, N.Y.

MANHATTAN

STAR

TIME A.M. ....  
P.M. ....

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA

- against -

MARY LOU DANTZLER and  
JACQUELINE DOZIER,

Defendants.

Cr. No. \_\_\_\_\_  
(T. 21, U.S.C., §841(a)(1);  
T. 18, U.S.C., §2)

74CR 132

----- X  
THE GRAND JURY CHARGES:

On or about the 12th day of December 1973, within the Eastern District of New York, the defendant MARY LOU DANTZLER, aided and abetted by the defendant JACQUELINE DOZIER, did knowingly and intentionally possess with intent to distribute approximately 73.05 grams (gross weight) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1); Title 18, United States Code, Section 2).

A TRUE BILL.

Anthony J. Malavas  
Foreman.

Edward J. Boyd II / AB

UNITED STATES ATTORNEY

## 1 CHARGE OF THE COURT

2 THE CLERK: Criminal cause on trial

3 United States of America versus Jacqueline Dozier.

4 THE COURT: We are ready to go ahead with  
5 the charge to the jury.

6 Good morning, ladies and gentlemen,

7 Mr. Dawson, Mr. Gutman and Ms. Dozier.

8 Ladies and gentlemen of the jury, we are  
9 now at the stage where you have heard the evidence  
10 and you have heard the arguments and it is my duty  
11 to give you instructions as to the law before you  
12 proceed. First I'll tell you the general prin-  
13 ciples that apply to all criminal trials and then  
14 something about the nature of the charges in this  
15 case, and the specific rules of law that apply to  
16 those charges, and something about how we evaluate  
17 the evidence and how to reach a verdict. It's the  
18 prosecutor's duty in our adversary system in  
19 criminal justice to do his business, to present  
20 the Government's case and defense counsel to do  
21 his best to represent the defendant's interest.  
22 The Court enforces the rules of evidence and the  
23 jury decides the truth or falsity of the testi-  
24 mony and the inferences to be drawn from the  
25 evidence. Credibility is one of the real problems

CHARGE OF THE COURT

here.

3 It is your duty as jurors to follow the  
4 law as I state it in my instructions and apply  
5 those rules of law to the facts as you find them  
6 from the evidence in the case.

You are the sole judges of the facts.

8 You are to perform your duty without bias or  
9 prejudice for or against any party. The law  
10 doesn't permit jurors to be governed by prejudice  
11 or by sympathy, or by public opinion.

12 The law presumes that a defendant is in-  
13 nocent of crime and so nothing but legal evidence  
14 presented before the jury can be considered in  
15 support of any charge against an accused. This  
16 presumption of innocence is enough in itself to  
17 acquit a defendant unless the jurors are satisfied  
18 beyond a reasonable doubt of the guilt of the indi-  
19 vidual defendant on a particular count from all the  
20 evidence in the case.

21 I'll say just a few words about what the  
22 law means by a reasonable doubt.

23                   A reasonable doubt is a sincere doubt based  
24                   on reason and common sense arising from the state  
25                   of the evidence, or from the absence of evidence.

## CHARGE OF THE COURT

A reasonable doubt means a doubt that a juror asserts arbitrarily to avoid performing an unpleasant task. It doesn't mean a possible doubt. It's rarely possible to prove anything to an absolute certainty or beyond a possible doubt and the Court doesn't require this. Sometimes we describe proof beyond a reasonable doubt as referring to the type of doubt that would make you hesitate to act in your own important affairs, where you frequently have to make a decision after listening to different people's advice or information as to what they think are the facts. This rule of proof beyond a reasonable doubt operates on the whole case. It doesn't mean that each bit of evidence must be proved beyond a reasonable doubt. It means that the sum total of the Government's evidence plus all the other evidence in the case must satisfy you beyond a reasonable doubt as to each element of the crime charged or you must acquit. Finding a person to be guilty of a felony and subjecting her to criminal penalties is serious. You may consider this fact in deciding whether you have a reasonable doubt. Nevertheless, if you are convinced beyond a reasonable doubt of

## 1 CHARGE OF THE COURT

2 the defendant's guilt you must find her guilty  
3 and not be swayed by sympathy.

4 An indictment is just a formal method of  
5 accusing a defendant of a crime. I'm going to  
6 read it to you so you can know the charge. It's  
7 not evidence of any kind against the accused,  
8 and the fact that a Grand Jury made an indictment  
9 doesn't create any inference of guilt.

10 The defendant has pleaded not guilty in  
11 the indictment and that plea created the issues  
12 which you must decide.

13 The indictment charges that on or about  
14 the 12th day of December, 1973, within the Eastern  
15 District of New York, the defendant Mary Lou Danzler,  
16 aided and abetted by the defendant Jacqueline Docier,  
17 did knowingly and intentionally possess with intent  
18 to distribute approximately 73.05 grams gross weight  
19 of cocaine hydrochloride, a Schedule 2 narcotic  
20 drug controlled substance, in violation of Title 21,  
21 United States Code Section 841(a)(1). It is not  
22 necessary for the Government to prove exact amounts,  
23 if the figures are sufficiently approximate so  
24 the defendant knew by the indictment the nature  
25 and substance of the offense that was charged.

CHARGE OF THE COURT

2 Title 21 Section 841 says, "Except as  
3 authorized by this sub-chapter it shall be unlaw-  
4 ful for any person knowingly or intentionally to  
5 manufacture, distribute or dispense or possess  
6 with intent to manufacture, distribut or dispense  
7 a controlled substance." Controlled substances  
8 as defined in the United States Code includes  
9 opium derivative and cocoa derivative, so cocaine  
10 is a controlled substance under Schedule 2 of that  
11 section. I'm not going to review the range of  
12 penalties for the violation because although they  
13 may be severe, it's for the Judge to consider the  
14 extent of any penalty, whether there should be  
15 imprisonment, fine.

16 The statute requires that the sale distri-  
17 bution be made knowingly or intentionally and an  
18 act is done knowingly if it's done voluntarily  
19 and intentionally and not because of mistake or  
20 accident or other reason. The purpose of the word  
21 knowingly is to be sure that no one will be con-  
22 victed for an act that's done because of mistake  
23 or accident or other innocent reason.

24 The charge really as you analyze that in-  
25 dictment is that Mary Lou Danzler was distributing

## 1 CHARGE OF THE COURT

2 the cocaine and that she was being helped by the  
3 defendant Jacqueline Docier; and Section 2 of  
4 Title 18 of the United States Code says, "Whoever  
5 commits an offense against the United States or  
6 aids, abets, counsels, commands, induces or pro-  
7 cures its commission is punishable as a principal."  
8 That means if a person helps somebody else commit  
9 an offense, the helper is just as liable as the  
10 one who does it, but the help must be intentional.  
11 In order to aid or abet the commission of a crime  
12 within the meaning of the statute, a person must  
13 associate herself with the criminal venture, partic-  
14 ipate in it and try and make it succeed. It's not  
15 just enough that Ms. Docier was there when cocaine  
16 was about to be delivered, not even if she knew  
17 at the last minute that it was cocaine. You must  
18 ask whether she associated herself with the venture,  
19 whether she participated in it as something she  
20 wanted to bring about or sought by her action to  
21 make it succeed. If she did, then she is an aider  
22 and abetter; and so a defendant doesn't need to do  
23 every act constituting the offense charged in order  
24 to be found guilty. If she knew beforehand that  
25 there was a cocaine transaction in the offering

## CHARGE OF THE COURT

1 and she took the two men to the Kameo Theater  
2 for the purpose of having cocaine passed there,  
3 that was a helping; if she thought it was a  
4 theater date and she was just going out with a  
5 couple of men that would not be aiding and abetting  
6 in the sale of cocaine.

7 I refer to the word knowingly, knowledge can  
8 be proved by a defendant's conduct and by all facts  
9 and circumstances surrounding the case. No person  
10 can intentionally avoid knowledge by closing his  
11 eyes to facts which should prompt him to investi-  
12 gate; and so, knowledge can be established by direct  
13 or circumstantial evidence just as any other facts  
14 in the case, and you can consider the peculiarity  
15 if you consider as such of going to a theater with  
16 a couple of strange men without the one who intro-  
17 duced him to you at 10:00 o'clock at night, in the  
18 middle of the second show and see whether that is  
19 a circumstance that implies knowledge that there  
20 was a cocaine transaction to take place in an area  
21 where Miss Docier, Sr. said cocaine was all over  
22 the neighborhood, or whether it was just an adven-  
23 turous girl who thought here was a chance to go  
24 out, she had an older friend and she would have  
25

1  
CHARGE OF THE COURT

2 an interesting time. If you find from all the  
3 evidence beyond a reasonable doubt either that  
4 the defendant knew that she was helping in a  
5 cocaine transaction, or that she had a conscious  
6 purpose to avoid finding out the identity of the  
7 substance so as to clear her eyes to the facts,  
8 you could find sufficient evidence to find her  
9 guilty beyond a reasonable doubt. But it's up to  
10 you whether there is a reasonable doubt.

11 Now, on the evaluation of the evidence.  
12 I said at the beginning that a defendant doesn't  
13 have to testify and you can't infer anything if  
14 she does not. The law does permit defendants to  
15 testify on their own behalf, if they wish, and  
16 you are to determine how far the defendant's own  
17 testimony is credible. You could consider deep  
18 personal interest that every defendant has in the  
19 result of a case in weighing the testimony. To  
20 some extent only Jacqueline Docier could defend  
21 herself against the contention that she knew what  
22 was going on and that she had gone along in order  
23 to help find a safe place to distribute this  
24 contraband.

25 A defendant who would help in selling

**CHARGE OF THE COURT**

2 cocaine would probably lie to protect herself but  
3 she submitted herself to cross-examination, and  
4 a defendant who testifies may well be telling the  
5 truth. It's for you to weigh all those circumstances.  
6 When you come to the evidence generally there is  
7 both direct and circumstantial evidence. The loca-  
8 tion of the theater, the acts of the various people,  
9 the time and the place all have a bearing one way  
10 or the other whether there was a purpose to aid  
11 and abet in the transaction. Direct evidence is  
12 the testimony of an eyewitness; circumstantial  
13 evidence is the reference to a chain of circum-  
14 stances that point to the existence or nonexistence  
15 of certain facts. As a general rule the law makes  
16 no distinction between direct and circumstantial  
17 evidence.

## 1 CHARGE OF THE COURT

2 from any facts that you find are proved. You are  
3 not confined to the bare bones of the testimony  
4 or exhibits and you don't leave your common sense  
5 outside when you go into the jury room to deliberate,  
6 but you can't decide anything just on guesswork or  
7 speculation. You have to base your inference on  
8 evidence in the case. It's the theory of American  
9 justice that twelve citizens selected as nearly  
10 as they can as a cross-section of the community,  
11 without any previous bias, can best determine the  
12 truth of a charge.

13 When you weigh the testimony of the various  
14 witnesses you can consider their relationship to  
15 the Government and to the defendant, the extent  
16 to which they have any bias or interested in the  
17 outcome of the case. You consider their manner  
18 while they were testifying, their candor and  
19 intelligence as you observed it. You could also  
20 consider the extent to which any testimony has  
21 been corroborated or contradicted by other credible  
22 evidence, inconsistencies within the testimony of  
23 any witness either on direct or cross-examination,  
24 and whether any witness has changed his testimony.  
25 If you believe a witness has lied on anything you

CHARGE OF THE COURT

2 could say we don't believe anything else he says  
3 or you could say part of what the witness said  
4 was true and part was not true. Where you find  
5 inconsistencies in the testimony of witnesses  
6 simply you could disregard the testimony or you  
7 can accept it in part. A witness may have been  
8 mistaken or untruthful with respect to parts of  
9 his testimony and correct and truthful with respect  
10 to other parts. There were inconsistencies between  
11 the testimony of Mr. Bergman and Mr. Miller but you  
12 can consider, if you go back and ask two people  
13 about what happened and how close they were to a  
14 parked car last Christmas week, whether you would  
15 get the same answers from both of them and if they  
16 were incorrect; if they were different, whether  
17 one of them was lying, whether it was just a dif-  
18 ferent recollection is the same thing, whether it  
19 relates to a minor factor or to a major factor.

20 We had Government agents testifying with  
21 respect to what the defendant told them in the car  
22 and in the theater. You are not to give any greater  
23 weight to their testimony because they work for the  
24 New York City police of Drug Enforcement Agency.  
25 They could be wrong or they may have been insensitive,

CHARGE OF THE COURT

2 to build up a strong case. Don't take anything  
3 away from them. Just because they are Government  
4 officers their testimony should be evaluated in  
5 the same manner that you would evaluate the testi-  
6 mony of any other witness.

7 And as counsels said you are not to decide  
8 the case or any issue on the basis of the number  
9 of witnesses or the number of questions. The  
10 Government may have had more witnesses than the  
11 defendant but you are to determine the quality of  
12 the evidence and whether it has persuaded you be-  
13 yond a reasonable doubt of the defendant's, or  
14 whether there is a reasonable doubt.

## 1 CHARGE OF THE COURT

2 court reporter to come back and read some of.  
3 the testimony to you when we get counsel together  
4 and find the particular spot in the testimony if  
5 you think you are going to need it. I use written  
6 notes because the instructions to the jury are  
7 important from the point of view of any appeal.  
8 if there is a conviction, and because counsel have  
9 a right to comment on what I've said afterwards  
10 and ask for corrections if need be, and sometimes  
11 also submit requests beforehand as to things to  
12 be included in the charge.

13 Now, just a few words about reaching a  
14 verdict. There is only one count in the indictment.  
15 The answer is just guilty or not guilty but your  
16 verdict must be unanimous. You all have to agree,  
17 and I think it's a good idea to discuss the evidence  
18 rather fully before you take a tentative vote so  
19 that no one will be committed to hasty conclusions  
20 before you study the entire case.

21 When you are in the jury room Miss Cannnell,  
22 Juror No.1, will act as your foreman. She should  
23 try to be sure that everyone gets a chance to talk,  
24 not more than one person talking at a time. Fre-  
25 quently it will be times when somebody wants to

## 1 CHARGE OF THE COURT

2 interrupt and she will figure out how to handle  
3 that, and she should help decide when you are  
4 going to take a ballot. It's your deliberation,  
5 you should assume the attitude of judges of the  
6 facts that way you make a high contribution to  
7 the administration of justice.

8 There will be a marshal outside the jury  
9 room to whom you can give a note if you want any  
10 further instructions or evidence. When you reach  
11 a verdict you simply hand the marshal a note saying  
12 you reached a verdict and when you come in court  
13 Miss Cannell will record the verdict and either  
14 party can have the jury polled. Each juror will  
15 be asked whether she agrees with the verdict so  
16 we can be sure it is unanimous.

17 In determining guilt or innocence, you  
18 should not give any consideration of the matter of  
19 punishment, that matter is exclusively a responsi-  
20 bility of the Judge if the defendant is found guilty.  
21 You are each entitled to your own opinion but you  
22 should exchange views with your fellow jurors and  
23 listen carefully to each other. You should not  
24 hesitate to change an initial opinion if you are  
25 convinced that another opinion is correct, but

## 1 CHARGE OF THE COURT

2 nobody has to give into the majority. Your final  
3 verdict must be your own.

4 I don't know how long you are going to  
5 need to reach a verdict, if it's going to run be-  
6 yond the lunch hour we'll order some sandwiches  
7 and I'll have a menu sent in so you can arrange  
8 for that. The two alternates have not been needed,  
9 so Miss Graham and Miss Nagler will be excused  
10 and the rest of you can go into the jury room.  
11 If I call you out in the next few minutes it will  
12 be a sign to give you supplemental instructions,  
13 if not it's a sign that there is nothing that I  
14 think need to be corrected.

15 Now, the oath you took in the beginning  
16 sums up your duty without fear or favor to any  
17 person, you will well and truly try the issues be-  
18 tween the parties according to the evidence given  
19 to you in court and the laws of the United States.

20 I don't see a marshal here this morning.

21 THE CLERK: He's on his way up now.

22 THE COURT: I'll excuse the alternate jurors  
23 now. Do you have their two cards? They better go  
24 back downstairs.

25 I don't think it's necessary for the jurors

1 to hear the oath of the marshals. He's sworn to  
2 keep you in a safe and convenient place and not  
3 permit anyone else to talk to you unless to ask  
4 whether you have reached a verdict. I think you  
5 should take the jurors into the jury room and  
6 I'll swear in the marshal as soon as he gets here.

7 (Whereupon jurors were excused from  
8 the courtroom)

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1 MR. GUTMAN: I think the specific question  
2 that the jurors are asking, do you have to know  
3 it's drugs when you are aiding and abetting in a  
4 drug case, and I think the answer is yes.

5 THE COURT: Except that knowledge may be  
6 either actual knowledge or deliberately closing  
7 your eyes.

8 MR. GUTMAN: The jury asked whether she  
9 thought it was something else.

10 THE COURT: I'll give them a full answer.  
11 I think I'll cover both. Bring them in.

12 THE CLERK: Jury note marked Court Exhibit 2.  
13 (So marked)

14 (Whereupon jurors reentered courtroom  
15 are now seated in jury box)

16 THE COURT: Miss Cannell, and ladies and  
17 gentlemen, sorry I kept you waiting. It took  
18 some time to get everybody together and do some  
19 studying to make sure my answer would be as right  
20 as I could make it. My experience has been jurors  
21 ask experienced questions. "If the defendant went  
22 there thinking there was an illegal transaction  
23 but had no **idea** it was cocaine does this make a  
24 difference?" I would say it does make a difference  
25 to the extent there are different penalties for

1 different crimes, so I don't think aiding and  
2 abetting in something less than drugs could justify  
3 a conviction here, but cocaine and heroin are  
4 in the same category. If she believed it was drugs  
5 but wasn't sure what kind, that wouldn't affect  
6 her guilt of aiding and abetting; and what I said  
7 about knowledge should be considered. Knowledge  
8 may be proved by a defendant's conduct and by all  
9 of the facts and circumstances surrounding the case.  
10 No person can intentionally oppose knowledge by  
11 closing her eyes to facts that should prompt her  
12 to investigate. So in order to convict you have  
13 to find either that she knew that some kind of  
14 narcotic drug was involved not necessarily by the  
15 time she went to the theater but by the time, if  
16 you believe the Government agent's testimony, that  
17 she reassured the Government agent that Mary Lou  
18 would be coming, she must have either known that  
19 either there was a narcotic drug involved or had  
20 knowledge of sufficient facts that she was justifying  
21 to prevent herself from having knowledge,  
22 deliberately closing her eyes. I hope that will  
23 help you to decide it. I understand that you have  
24 not sent out for lunch yet.

25 THE CLERK: They have.

1 THE COURT: All right.

2 (Whereupon jurors were excused from  
3 the courtroom)

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10 (Continued on next page)

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1                   AFTERNOON SESSION  
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3                   THE COURT: Mark this as a court exhibit.

4                   THE CLERK: Jury note marked as Court

5                   Exhibit .

6                   (So marked)

7                   THE COURT: I have your note and I am not  
8                   supposed to know what your vote is or which way  
9                   it is, but we have put in some time on the case  
10                  and I am just going to give you a few thoughts.  
11                  that we do think are appropriate where you have  
12                  a jury who has difficulty in reaching agreement.  
13                  The trial is not a long one. If you don't agree  
14                  on a verdict the case is left up and undecided,  
15                  and the defendant will still be subject to an open  
16                  charge and there is no reason to believe that the  
17                  case will be tried any better or more exhaustively  
18                  at some further day than it has been during this  
19                  period. Any future jury will have to be selected  
20                  the same way, the same sources that you were chosen  
21                  by and there is no reason to believe that another  
22                  twelve men and women are any more intelligent or  
23                  competent or that the evidence would be any dif-  
24                  ferent. So the task before us is one of conscious  
25                  decision that you are equipped to make. A jury

1 must not surrender his or her conscious conviction,  
2 but it is your duty to consult with one  
3 another with a view of reaching agreement if you  
4 can do so without violence to individual judgment.  
5 Elaborating on some of the things I said before,  
6 each of you should -- part of the process of  
7 individual decision is a consideration of the  
8 evidence and the views of fellow jurors, and in  
9 the course of your deliberation you should not  
10 hesitate to reexamine your own views and change  
11 your opinion if you are convinced it's erroneous.  
12 You have to examine the question submitted to you  
13 with candor, with frankness, with proper considera-  
14 tion for one another's opinion. Each of you  
15 should give attention to the views of others and  
16 reinspect them, listen to the disposition of others  
17 keeping your own views under continuing review.  
18 Each juror ought to consider whether his own  
19 appraisal of the weight of the evidence is a  
20 correct one. Of course, disregard what counsels  
21 said, remarks that I have made. It was 11:00 o'clock  
22 this morning when I gave the case to you. You have  
23 been together four hours, probably, leaving out the  
24 lunch hour, but I think that you ought to stay at  
25 it a little while more and sometimes around 4:30

1 or 5:00 if you haven't reached agreement let me  
2 know, and then you can decide whether it is worth  
3 staying any longer. I'm not going to hold you  
4 over until tomorrow but I think you should make  
5 another effort to reach agreement. Continue your  
6 deliberations until such time as you believe  
7 desirable. I'm not trying to exercise any com-  
8 pulsion on anyone. I'm just saying that we will  
9 lose the good of this trial and have to start it  
10 over again before another twelve jurors if you  
11 can't reach agreement now. So please go back and  
12 put another hour or two and see if you can accom-  
13 plish something.

14 (Whereupon court stood in recess)

15 (After recess)

16 THE COURT: One juror feels that there is  
17 no way for anyone to make a decision regarding  
18 anyone's guilt, this decision is reserved to God.  
19 The juror will not discuss the case, the facts  
20 or anything about it.

21 MR. DAWSON: I believe you also indicated  
22 about following your instructions, whether it  
23 would be anything to prevent them from following  
24 your instructions.

25 THE COURT: Bring in the jury.

(Whereupon jurors entered the courtroom  
are now seated in the jury box)

3 THE COURT: Miss Cannell, ladies and gentle-  
4 men. I have your note that one juror finds that  
5 there is no way for one person to make a decision  
6 on anyone else's guilt, that decision is reserved  
7 for God. I have sometimes excused people from  
8 serving at all as jurors if they told me that  
9 when they are summoned to serve. I didn't ask  
10 the question that I sometimes ask, whether there  
11 is any juror who would be unwilling or unable to  
12 bring in a verdict of guilty if convinced of guilt,  
13 or a verdict of not guilty if left with reasonable  
14 doubt at the end of the case, but I did ask whether  
15 there was any juror who knew any reason why he or  
16 she couldn't fairly act as a juror in this case  
17 and the one who is unwilling to decide should have  
18 disclosed it at the time. The oath that you all  
19 took, you and each of you do solemnly swear that  
20 you will well and truly try this case before you  
21 and a true verdict rendered. That means that you  
22 promised to decide it and I think under those  
23 circumstances it is necessary to reach a decision.  
24 I can't force anybody to act contrary to his  
25 religious beliefs in God, it's something that the

1 Court should have known before, and I think there  
2 is a duty to make a decision, to vote one way or  
3 the other. I'm not saying that you should give up  
4 a vote that you believe in because you are in a  
5 minority, but I do say you can't simply say, I'm  
6 not going to vote.

7 I'm going to ask you to go back for another  
8 half-hour to see what you can do. Please go back  
9 to the jury room.

10 (Whereupon jurors were excused from the  
11 courtroom)

12 THE COURT: Mark this as a court exhibit.

13 THE CLERK: Jury note marked as Court  
14 Exhibit .

15 (So marked)

16 MR. DAWSON: It might be premature, should  
17 the jury in the next half-hour be unable to reach  
18 a verdict and in light of that most recent note  
19 which goes to the very heart of the process, about  
20 these last few days and indeed what the system is  
21 all about, I would respectfully suggest to your  
22 Honor perhaps an inquiry of the forelady after the  
23 dismissal of the jury as to who on the jury was  
24 the reason for that note, so that perhaps that  
25 person might be relieved of the requirement of

1 further jury service, whether he or she would  
2 have a balance of service this week and next  
3 week and have serious questions about that per-  
4 son's desire or ability to serve as a juror.

5 THE COURT: I heard the jury excuses and  
6 I heard people say I'm not able to decide a case,  
7 and I excuse them.

8 MR. GUTMAN: To make that statement might  
9 embarrass the individual, it's a secret ballot.

10 THE COURT: I think the marshal may know  
11 who it is. I'm not going to inquire of the fore-  
12 lady. I may say something to that effect, but  
13 anyone who has that view if the note accurately  
14 expresses it --

15 MR. DAWSON: I'm concerned there may be  
16 some further period of time that the juror may  
17 finish.

18 THE CLERK: This panel is a holdover.

19 THE COURT: This group is finished. All  
20 right.

21 (Whereupon court stood in recess)

22 (After recess)

23 THE COURT: The jury reached a verdict.  
24 Bring in the jury.

25 (Whereupon jurors entered courtroom

CERTIFICATE OF SERVICE

Feb 14, 1975

I certify that a copy of this brief and appendix  
has been mailed to the United States Attorney for the  
Eastern District of New York.

Sherila Gussberg